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In Chamber

Case :- MATTERS UNDER ARTICLE 227 No. - 4042 of 2022

Petitioner :- Smt. Siya Dulari

Respondent :- Awadh Naresh

Counsel for Petitioner :- Krishna Mohan Garg

Counsel for Respondent :- Satyvrat Tripathi, Birendra Singh

Hon'ble Jayant Banerji, J.

1. Heard Mr. Krishna Mohan Garg, learned counsel for the plaintiff-petitioner and Mr. Brijendra Kumar (Advocate Roll-A/B 0457/23), Advocate holding brief of Mr. Birendra Singh, learned counsel for the defendant-respondent.

2. This petition has been filed seeking to set aside the judgment and order dated 24.12.2021 passed by the Nyayadhikari, Gram Nyayalaya, Manikpur, District-Chitrakoot passed in New Original Suit No. 41/2020 (Old Original Suit No.329/2018) (Smt. Siya Dulari Vs. Awadh Naresh).

3. The contention on behalf of the petitioner is that the plaintiff-petitioner instituted a suit for declaring a sale deed registered on 2.6.2018 as a void document as well as for permanent injunction with regard to the suit property. This suit was instituted as Original Suit No. 329 of 2018 in the court of Civil Judge (Junior Division), Chitrakoot and pleadings were exchanged. The contention is that after coming into force of the Gram Nyayalayas Act, 2008¹, the District Judge by an order dated 11.9.2020 directed that the record of the suit be transferred to the Gram Nyayalaya, Manikpur and,

¹ Act, 2008

accordingly, on 14.9.2020, an order was passed by the court concerned transferring the civil suit to the Gram Nyayalaya in exercise of power under Section 16 of the Act, 2008.

4. It is stated that issue No.5 was framed which was that whether the court had jurisdiction to hear the matter. By an order dated 1.10.2020 the Gram Nyayalaya held that since the counsel for the defendant had made no arguments from which it could be gauged that the Gram Nyayalaya had no jurisdiction, therefore, the Gram Nyayalaya had jurisdiction to decide the case and, accordingly, the issue No.5 was decided in the affirmative.

5. It is stated that despite the jurisdiction of the Gram Nyayalaya to decide those types of civil cases which are provided in Part I of the Second Schedule of the Act, 2008, the Gram Nyayalaya proceeded to decide the suit which was for declaring a sale deed as void. It is contended that the provisions of Section 13 and 14 of the Act, 2008 circumscribe the jurisdiction of the Gram Nyayalayas, and a suit for declaring a sale deed as void would not lie within the jurisdiction of the Gram Nyayalaya. It is further stated that by means of the impugned judgment and order dated 24.12.2021, the Gram Nyayalaya has not only adjudicated and dismissed the suit, but has exercised a jurisdiction and has recorded evidence in a manner that is not required to be done by a court which is required to adopt a summary procedure for adjudication. Learned counsel has referred to the provision of Section 24 of the Act, 2008 in this regard. It is stated that evidence of the plaintiff's witnesses were recorded in detail as were the evidence of the defendant's

witnesses and thereafter the judgment was passed, which is wholly without jurisdiction and is void *ab initio*.

Learned counsel has referred to the plaint to contend that basis of the suit for seeking declaration of the voidance of a sale deed was undue influence and fraud; that the civil courts have jurisdiction to try all suits unless they are expressly or impliedly barred given the provisions of Section 9 of the Code of Civil Procedure, 1908 (CPC); that Order 5 to Order 20 of the CPC provide a detailed procedure for conduct of suit till its logical conclusion and it is Order 37 of the CPC that provides for summary procedure. Learned counsel has referred to clause (a) of Section 2 of the Act, 2008 that defines Gram Nyayalaya, Section 3 of which provides for establishment of Gram Nyayalaya; Sections 11, 12, 13 and 14 that deal with jurisdiction of the Gram Nyayalaya and Sections 23 and 24 which provides for procedure in civil cases. It is stated that Section 24 provides for filing of an application and not a plaint. Under Section 23, the provisions of the CPC, in so far as they are not inconsistent with the provisions of the Act, 2008, would apply to the procedure before a Gram Nyayalaya and for the purpose of the said provision of the code, the Gram Nyayalaya shall be deemed to be a civil court. It is stated that the procedure reflected in Section 24 of the Act, 2008 is in the nature of the summary trial which excludes the detailed procedure provided from Orders 5 to 20 of the CPC. Learned counsel has referred to the provision of Section 26 that provides for efforts for conciliation and settlement of civil disputes; Section 30 which refers to the scope of application of the Indian Evidence Act, 1872; and, the manner of recording of oral evidence as provided in Section 31, to contend that given the

special procedure so provided, cases necessitating recording of contentious and admissible evidence / testimonies in detail, would not be fit to be adjudicated by the Gram Nyayalaya. Learned counsel has referred to Part I of the Second Schedule of the Act, 2008 and has stated that sub-clause (b) and (c) of Clause (i) which refers to civil disputes for the use of common pasture and for regulation and timing of taking water from irrigation channel pertain to Government/Gaon Sabha property; sub-clause (a) thereof, which provides for a case relating to right to purchase of property, refers to an agreement to sell which is prior to purchase of a property, that is to say, the right of purchase of property is a pre-existing right. It is stated that Chapter II of the Specific Relief Act, 1963 refers to specific performance of contracts that falls within the ambit of sub-clause (a) aforesaid, that is, the right to purchase of property. It is stated that given the provisions for cancellation of instruments and declaratory decrees referred to in Chapter V and Chapter VI of the Specific Relief Act, even in specific performance suits where defence of void/voidable agreement is taken on the ground of fraud and undue influence, the same would exclude the jurisdiction of the Gram Nyayalaya and under the circumstances, a declaratory decree, as envisaged under Section 34 of the Specific Relief Act, is not covered by sub-clause (a) of clause (i) of Part I of the Second Schedule of the Act, 2008.

6. Learned counsel for the defendant-respondent has referred to the preamble to the Act, 2008 as well as Section 13 to contend that given the scope of the Act and the suit in question being within the pecuniary limit prescribed for Gram Nyayalayas by the High Court, the Gram Nyayalaya

will have jurisdiction in the matter. It is stated that the order of the District Judge, Chitrakoot dated 8.9.2020 is on record which directed that civil cases and criminal matters pertaining to Manikpur and certain other tehsils pending in the District Court, be transferred to the Gram Nyayalaya concerned and therefore, the Gram Nyayalaya would have jurisdiction. It is further stated that under Section 34 of the Act, 2008, if a remedy of appeal would not lie due to valuation, then a remedy of revision would anyway be available. Learned counsel has referred to a Judgement of the High Court of Bombay passed in the Matter of **Shobha Janardhan Masram Vs. Ganpat Gulabrao Thakre**², particularly, paragraph nos. 12 and 13 thereof to contend that since no objection was raised before the Gram Nyayalaya with regard to the jurisdiction and neither was any appeal filed before the appellate court against the order of the Gram Nyayalaya affirming its jurisdiction, this petition ought to be rejected.

7. The Act, 2008 came into force on 2.10.2009 by means of a notification dated 11.11.2009. The jurisdiction of Gram Nyayalaya is in respect of both civil and criminal matters under the prescribed procedures and to the extent of the jurisdiction provided in terms of Section 11 by the Act, 2008. As far as civil jurisdiction is concerned, the relevant provision reads as follows:

“13. Civil jurisdiction.- (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, and subject to sub-section (2), the Gram Nyayalaya shall have jurisdiction to-

(a) try all suits or proceedings of a civil nature falling under the classes of disputes specified in Part I of the Second Schedule;

² 2015 (5) MLJ 271

(b) try all classes of claims and disputes which may be notified by the Central Government under sub-section (1) of Section 14 and by the State Government under sub-section (3) of the said section.

(2) The pecuniary limits of the Gram Nyayalaya shall be such as may be specified by the High Court, in consultation with the State Government, by notification, from time to time.”

8. The Central and the State Governments are empowered to amend the schedules to the Act, 2008 under the provisions of Section 14 which reads as follows:

“14. Power to amend Schedules.- (1) Where the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, add to or omit any item in Part I or Part II of the First Schedule or Part II of the Second Schedule, as the case may be, and it shall be deemed to have been amended accordingly.

(2) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

(3) If the State Government is satisfied that it is necessary or expedient so to do, it may, in consultation with the High Court, by notification, add to any item in Part III of the First Schedule or Part III of the Second Schedule or omit from it any item in respect of which the State Legislature is competent to make laws and thereupon the First Schedule or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

(4) Every notification issued under sub-section (3) shall be laid before the State Legislature.”

9. Chapter V of the Act, 2008 provides for the procedure in civil cases. The relevant Sections mentioned in Chapter V read as follows:

“23. Overriding effect of Act in civil proceedings.- The provisions of this Act shall have effect notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Gram Nyayalaya; and for the

purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a civil Court.

24. Special procedure in civil disputes.- (1)

Notwithstanding anything contained in any other law for the time being in force, every suit, claim or dispute under this Act shall be instituted by making an application to the Gram Nyayalaya in such form, in such manner, and accompanied by such fee, not exceeding rupees one hundred, as may be prescribed by the High Court, from time to time, in consultation with the State Government.

(2) Where a suit, claim or dispute has been duly instituted, a summons shall be issued by the Gram Nyayalaya, accompanied by a copy of the application made under subsection (1), to the opposite party to appear and answer the claim by such date as may be specified therein and the same shall be served in such manner as may be prescribed by the High Court.

(3) After the opposite party files his written statement, the Gram Nyayalaya shall fix a date for hearing and inform all the parties to be present in person or through their advocates.

(4) On the date fixed for hearing, the Gram Nyayalaya shall hear both the parties in regard to their respective contentions and where the dispute does not require recording of any evidence, pronounce the judgment; and in case where it requires recording of evidence, the Gram Nyayalaya shall proceed further.

(5) The Gram Nyayalaya shall also have the power,-

(a) to dismiss any case for default or to proceed *ex parte*; and

(b) to set aside any such order of dismissal for default or any order passed by it for hearing the case *ex parte*.

(6) In regard to any incidental matter that may arise during the course of the proceedings, the Gram Nyayalaya shall adopt such procedure as it may deem just and reasonable in the interest of justice.

(7) The proceedings shall, as far as practicable, be consistent with the interests of justice and the hearing shall be continued on a day-to-day basis until its conclusion, unless the Gram Nyayalaya finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded in writing.

(8) The Gram Nyayalaya shall dispose of the application made under sub-section (1) within a period of six months from the date of its institution.

(9) The judgment in every suit, claim or dispute shall be pronounced in open Court by the Gram Nyayalaya immediately after conclusion of hearing or at any subsequent time, not exceeding fifteen days, of which notice shall be given to the parties.

(10) The judgment shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

(11) A copy of the judgment shall be delivered free of cost to both the parties within three days from the date of pronouncement of the judgment.

25. Execution of decrees and orders of Gram Nyayalaya.-

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the judgment passed by a Gram Nyayalaya shall be deemed to be a decree and it shall be executed by a Gram Nyayalaya as a decree of the civil Court and for this purpose, the Gram Nyayalaya shall have all the powers of a civil Court.

(2) The Gram Nyayalaya shall not be bound by the procedure in respect of execution of a decree as provided in the Code of Civil Procedure, 1908 (5 of 1908) and it shall be guided by the principles of natural justice.

(3) A decree may be executed either by the Gram Nyayalaya which passed it or by the other Gram Nyayalaya to which it is sent for execution.

26. Duty of Gram Nyayalaya to make efforts for conciliation and settlement of civil disputes.-

(1) In every suit or proceeding, endeavour shall be made by the Gram Nyayalaya in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the subject matter of the suit, claim or dispute and for this purpose, a Gram Nyayalaya shall follow such procedure as may be prescribed by the High Court.

(2) Where in any suit or proceeding, it appears to the Gram Nyayalaya at any stage that there is a reasonable possibility of a settlement between the parties, the Gram Nyayalaya may adjourn the proceeding for such period as it thinks fit to enable them to make attempts to effect such a settlement.

(3) Where any proceeding is adjourned under sub-section (2), the Gram Nyayalaya may, in its discretion, refer the matter to one or more Conciliators for effecting a settlement between the parties.

(4) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Gram Nyayalaya to adjourn the proceeding.

27. Appointment of Conciliators.- (1) For the purposes of Section 26, the District Court shall, in consultation with the District Magistrate, prepare a panel consisting of the names of social workers at the village level having integrity for appointment as Conciliators who possess such qualifications and experience as may be prescribed by the High Court.

(2) The sitting fee and other allowances payable to, and the other terms and conditions for engagement of, Conciliators shall be such as may be prescribed by the State Government.”

10. The general procedure is provided in Chapter VI of the Act, 2008 and the relevant provisions are quoted below:

“30. Application of Indian Evidence Act, 1872.- A Gram Nyayalaya may receive as evidence any report, statement, document, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).

31. Record of oral evidence.- In suits or proceedings before a Gram Nyayalaya, it shall not be necessary to record the evidence of witnesses at length, but the Nyayadhikari, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of substance of what the witness deposes, and such memorandum shall be signed by the witness and the Nyayadhikari and it shall form part of the record.

32. Evidence of formal character on affidavit.- (1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Gram Nyayalaya.

(2) The Gram Nyayalaya may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding, summon and examine any such person as to the facts contained in his affidavit.”

11. The provisions for appeals in civil cases is provided in Section 34 of the Chapter VII which reads as follows:

“34. Appeal in civil cases.- (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law, and subject to sub-section (2), an appeal shall lie from every judgment or order, not being an interlocutory order, of a Gram Nyayalaya to the District Court.

(2) No appeal shall lie from any judgment or order passed by the Gram Nyayalaya-

(a) with the consent of the parties;

(b) where the amount or value of the subject matter of a suit, claim or dispute does not exceed rupees one thousand;

(c) except on a question of law, where the amount or value of the subject matter of such suit, claim or dispute does not exceed rupees five thousand.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Gram Nyayalaya:

Provided that the District Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(4) An appeal preferred under sub-section (1) shall be heard and disposed of by the District Court within six months from the date of filing of the appeal.

(5) The District Court may, pending disposal of the appeal, stay execution of the judgment or order appealed against.

(6) The decision of the District Court under sub-section (4) shall be final and no appeal or revision shall lie from the decision of the District Court:

Provided that nothing in this sub-section shall preclude any person from availing of the judicial remedies available under articles 32 and 226 of the Constitution.”

12. Part I of the Second Schedule of the Act, 2008 reads as follows:

“PART I

SUITS OF A CIVIL NATURE WITHIN THE
JURISDICTION OF GRAM NYAYALAYAS

(i) Civil Disputes:

- (a) right to purchase of property;
- (b) use of common pasture;
- (c) regulation and timing of taking water from irrigation channel.

(ii) Property Disputes:

- (a) village and farm houses (Possession);
- (b) water channels;
- (c) right to draw water from a well or tube well.

(iii) Other Disputes:

- (a) claims under the Payment of Wages Act, 1936 (4 of 1936);
- (b) claims under the Minimum Wages Act, 1948 (11 of 1948);
- (c) money suits either arising from trade transaction or money lending;
- (d) disputes arising out of the partnership in cultivation of land;
- (e) disputes as to the use of forest produce by inhabitants of Gram Panchayats.”

13. In exercise of the powers conferred by Section 39 of the Gram Nyayalayas Act, Section 122 of the C.P.C. and all other powers enabling it in this behalf, the High Court of Judicature at Allahabad in consultation with the Government of Uttar Pradesh made the Uttar Pradesh Gram Nyayalaya (Procedure and Practice) Rules, 2009³. With regard to pecuniary jurisdiction of the Gram Nyayalaya and the court

³ Rules of 2009

fee payable, Rule 10 of the Rules of 2009 provides as follows:

“10. Pecuniary jurisdiction of the Gram Nyayalaya and the court fee payable.- (a) The Gram Nyayalaya shall have jurisdiction to entertain and decide all civil proceeding of valuation up to Rs.25,000/-:

Provided that the value for the purpose of determining the jurisdiction shall be done as per the provisions of the Suits Valuation Act 1887 read with the Court Fees Act, 1989.

Further provided that the High Court may from time to time in consultation with the State Government increase or reduce the limit of pecuniary jurisdiction of the Nyayadhikari.

(b) A fixed Court fee of Rs. 50 shall be payable on every plaint or original petition.

(c) The fees payable on vakalatnama shall be Rs.5 and on all other applications shall be Rs.2.”

14. The Act, 2008, thus ousts the jurisdiction of civil courts in view of the jurisdiction conferred on the Gram Nyayalaya with respect to scheduled matters which fall under the pecuniary jurisdiction of Rs.25,000/-. Therefore, Part-I of the Second Schedule to the Act, 2008 read with Clause (a) of sub-section (1) of Section 13 of the Act, 2008, civil disputes, property disputes and other disputes as mentioned thereunder, confers such jurisdiction on Gram Nyayalayas.

15. In the aforesaid suit, two distinct reliefs were claimed, one being a decree of declaration for declaring the sale deed dated 2.6.2018 as void and another for grant of permanent injunction that the defendant be restrained from disposing of the suit property during pendency of the suit.

16. Evidently, the pleadings were exchanged and at the stage of evidence, the learned District Judge transferred the suit to the Gram Nyayalaya in the year 2020.

17. A copy of the order-sheet of the suit has been enclosed as Annexure No. 7 to this petition and, as reflected therein, on 1.10.2020, counsel for the parties were heard with regard to the issue no. 5 which was that whether the Gram Nyayalaya had jurisdiction to consider the suit. The Gram Nyayalaya observed that the valuation of the suit was made at Rs. 390/- which was affirmed to be correct by the court in its order dated 24.10.2019; learned counsel for the defendants had made no such submission from which it could be reflected that the Nyayalaya had no jurisdiction to hear the suit. Accordingly, it was held that the Gram Nyayalaya has jurisdiction. It is admitted that the aforesaid order dated 1.10.2022 adjudicating the issue no. 5 was not challenged by the plaintiff-petitioner at an earlier point of time. By means of the judgment and order dated 24.12.2021, the suit of the plaintiff-petitioner was dismissed.

18. As regards the submission of the counsel for the respondent that the order dated 1.10.2022 affirming jurisdiction in the case by the Gram Nyayalaya not having being challenged earlier, the Supreme Court has held in various judgments that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if a court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. (Vide: *Jagmittar Sain Bhagat v. Director*⁴,
4 (2013) 10 SCC 136

*Cantonment Board v. Church of North India*⁵, *Deva Sahayam v. P. Savithramma*⁶.)

19. As regards jurisdiction, the present case requires consideration on two aspect. **Firstly**, whether, given the nature of the relief sought in respect of agricultural land, would it be the revenue courts which would have jurisdiction in the matter given the fact that declaration was sought for declaring the sale deed as void, or, would either the civil court or the Gram Nyayalaya have jurisdiction. **Secondly**, whether the Gram Nyayalaya or the civil court had jurisdiction to try the suit in view of the jurisdiction conferred by Clause (a) of sub-section (1) of Section 13 of the Act, 2008 read with Part I of the Second Schedule of the Act.

20. The Act, 2008 received the assent of the President on 7.1.2009 and was published in the Gazette of India, Extraordinary Part-II, Section I, dated 9th January 2009. The preamble of the Act is to provide for the establishment of Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto.

21. In the Statement of Objects and Reasons, with reference to Article 39-A of the Constitution and 114th report of the Law Commission of India on Gram Nyayalayas recommending establishment of Gram Nyayalayas so that speedy, inexpensive and substantial justice could be provided

5 (2012) 12 SCC 573

6 AIR 2006 SC 779

to the common man, the Bill was introduced on the lines recommended by the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice.

22. The extracts of salient features of the Bill as apparent from the Statement of Objects and Reasons, are as follows:-

- The Gram Nyayalaya shall be court of Judicial Magistrate of the first class and its presiding officer (Nyayadhikari) shall be appointed by the State Government in consultation with the High Court;
- The Gram Nyayalaya shall be established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Panchayats;
- The Gram Nyayalaya shall try criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the proposed Bill with the Central Government as well as the State Governments being given power to amend the First Schedule and the Second Schedule of the proposed Bill as per their respective legislative competence;
- The Gram Nyayalaya shall follow summary procedure in criminal trial as provided under sub-section (1) of Section 262 and Sections 262, 264 and 265 of the Cr.P.C. with certain modifications and as regards other matters which are not provided in the Bill, the provisions of the Cr.P.C. shall be applicable;
- The power of a civil court shall be exercisable by the Gram Nyayalaya with certain modifications and the Gram Nyayalaya shall follow the special procedure; as regards other matters which are not provided in the Bill, the provisions of the C.P.C. shall be applicable;
- The Gram Nyayalaya shall try to settle the disputes as far as possible by bringing about conciliation between

the parties and for this purpose, it shall make use of the conciliators to be appointed for this purpose;

- The judgment and order passed by the Gram Nyayalaya shall be deemed to be a decree and to avoid delay in its execution, the Gram Nyayalaya shall follow summary procedure for its execution;
- The Gram Nyayalaya shall not be bound by the rules of evidence provided in the Indian Evidence Act but shall be guided by the principles of natural justice and subject to any rule made by the High Court;
- A person accused of an offence may file an application for plea bargaining in Gram Nyayalaya in which such offence is pending trial and the same will be disposed of by that Gram Nyayalaya in accordance with the provisions of Chapter XXI-A of the Cr.P.C

23. The Statement of Objects and Reasons further provides that justice to the poor at their doorstep is the dream of the common man. Setting up of Gram Nyayalayas, which will travel from place to place, would bring to the people of rural areas speedy, affordable and substantial justice.

24. There is an aspect of jurisdiction relating to the subject matter of the suit and then there is the aspect of pecuniary jurisdiction that has been fixed by the High Court in the rules mentioned above, which is a limit of Rs.25,000/-. The pecuniary jurisdiction so fixed is in respect of only those suits, claims or disputes that are within the jurisdiction of the Gram Nyayalaya as provided for in the Schedule to the Act, 2008.

25. The Uttar Pradesh Revenue Code, 2006⁷ was passed by the Uttar Pradesh State Legislature and it received the assent

⁷ Code, 2006

of the President on 29th November 2012. The Code, 2006 was amended by the Uttar Pradesh Revenue Code (Amendment) Act, 2016. The Governor appointed 18 December 2015 and 11 February 2016 as the dates on which separate provisions of the Code, 2006 came into force. The provisions of the Code, 2006, except Chapters VIII and IX (which chapters pertain to (i) management of land and other properties by Gram Panchayat or other local authorities, and, (ii) tenures), are mandated to apply to whole of Uttar Pradesh and the aforesaid Chapters VIII and IX are mandated to apply to the areas to which any of the enactments specified at serial nos.19 and 25 of the First Schedule to the Code, 2006 were applicable on the date immediately preceding their repeal by the Code, 2006. At serial no.19 of the First Schedule is the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. At serial no.25 of the First Schedule is the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956.

26. The aforesaid two enactments of 1950 and 1956, including other enactments, specified in the First Schedule of the Code, 2006, were repealed with effect from 11.2.2016 in terms of Section 230 of the Code, 2006. However, as far as pending proceedings are concerned, Section 231 of the Code reads as follows:-

“231. Applicability of the Code to pending proceedings.- (1) Save as otherwise expressly provided in this Code, all cases pending before the State Government or any revenue court immediately before the commencement of this Code, whether in appeal, revision, review or otherwise, shall be decided in accordance with the provisions of the appropriate law, which would have been applicable to them had this Code not been passed.

(2) All cases pending in any Civil Court immediately before the commencement of this Code which would under this Code be exclusively triable by a revenue Court; shall be disposed of by such Civil Court according to the law in force prior to the date of such commencement.”

27. The suit was instituted in the year 2018. The plots of land in respect of which the suit has been filed are agricultural plots and the plaintiff's husband is stated to be the owner of the one-third part of each of the three plots. In the plaint, the defendant is referred to as the brother of the petitioner's husband, who is the co-tenure holder of one-fourth part of the property in dispute; that the plaintiff has only a daughter but no sons; that the husband of the plaintiff was ill and the entire expenses of his treatment was borne by the plaintiff and the plaintiff's brother-in-law; that in June, 2018, the plaintiff's husband suddenly fell ill and therefore, the plaintiff sent him along with his brother (the plaintiff's brother-in-law) to the doctor with all the prescriptions. The plaintiff's husband died on 25.8.2018 and after the funeral and post-funeral rites, when the plaintiff went for mutation of her name to the revenue authorities, she was informed that her brother-in-law has got his name mutated in the revenue records with regard to the aforesaid plots in dispute. After obtaining a copy of the sale deed allegedly executed by the plaintiff's husband in favour of her brother-in-law, it transpired that it was fraudulently executed. It was stated that the sale deed that was fraudulently got executed was a void document which is liable to be declared as such. Further relief of permanent injunction was also sought against the defendant.

28. Therefore, the case in the plaint is of the defendant having got the signatures of the petitioner's husband fraudulently made on the sale deed. Given the provisions under Chapter II of the Indian Contract Act, the alleged sale deed was voidable at the option of the party whose consent was caused by alleged coercion, fraud or misrepresentation or undue influence.

29. The option of avoiding a contract procured in any of the ways mentioned in Sections 19 and 19A of the Contract Act, is exercisable by the party's representatives, unless at the date of his death, he had lost it by acquiescence or otherwise⁸.

30. Reference, in the plaint to the alleged sale deed as being 'void', would have to be construed in terms of the above provisions of the Contract Act and the various judgments of this Court and the Supreme Court. The Supreme Court in the matter of **Smt. Bismillah Vs. Janeshwar Prasad and others**⁹ while referring to the various judgments passed by this Court including in the case of **Ram Padarath and others Vs. Second Addl. District Judge and others**¹⁰ observed as follows:

“9. If as, indeed, is done by the High Court the expression 'void' occurring in the plaint as descriptive of the legal status of the sales is made the constant and determinate and what is implicit in the need for cancellation as the variable and as inappropriate to a plea of nullity, equally, converse could be the position. The real point is not the stray or loose expressions which abound in inartistically drafted plaints, but the real substance of the case gathered by construing pleadings as a whole....”

8 Shraavan Goba Mahajan Vs. Kashiram Devji AIR 1927 Bom 384,
Ras Behari Naskar Vs. Haripada Naskar AIR 1934 Cal 762,
Manbhari Vs Sri Ram AIR 1936 All 672

9 (1990) 1 SCC 207

10 1989 (1) AWC 290

31. The terms 'void' and voidable' were considered by the Supreme Court in the case of **Dhurandhar Prasad Singh Vs. Jai Prakash University**¹¹ and it was observed as follows:

“22. Thus the expressions “void and voidable” have been the subject-matter of consideration on innumerable occasions by courts. The expression “void” has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.”

It needs mention that in **Dhurandhar Prasad Singh**, the Supreme Court was considering an appeal against a judgment of the High Court allowing a revision application while setting aside an order passed by the executing court rejecting an objection under Section 47 CPC as to the executability of a decree.

32. A coordinate Bench of this Court in the case of **Ganga Prasad and another Vs. Ram Das Alias Pappu and**

¹¹ (2001) 6 SCC 534

others¹², after considering a gamut of cases of the Supreme Court as well as the Full Bench of this Court in **Ram Padarath** has observed as follows:

“**10.** From the law noticed above, it is clear that where a document is voidable it is a good act unless avoided and, therefore, its cancellation would be required, if a party seeks to avoid its natural consequences.

.....

.....

14. It is equally well-settled that the question of jurisdiction depends upon the allegations in the plaint and not the merits or the result of the suit (vide *Bismillah versus Janeshwar Prasad*: (1990) 1 SCC 207, paragraph 9). Therefore in a suit instituted before a Civil Court for cancellation of an instrument, in respect to an agricultural land, if a plea with respect to the bar of section 331 of the UP ZA & LR Act is taken, the Court must first determine as to whether from the plaint averments the instrument, as alleged, is void or voidable. If the plaint averments go to show that the instrument is voidable at the instance of the plaintiff(s), then the suit would be maintainable in a Civil Court, but if it is alleged to be void then the Court may have to undertake a complex exercise so as to assess whether in a given set of facts a declaration of right or status of a tenure-holder is necessarily needed or not. If a declaration to that effect is necessarily needed, in that event, the relief for cancellation would be mere surplusage and redundant, because the Court, which has power to grant declaration can disregard a void document while granting a declaratory relief. In such an event a civil suit would be barred by sub-section (1) of Section 331 of the UP ZA & LR Act.

15. Coming to the facts of the instant case, from the plaint, which is on record as Annexure No.3 to the affidavit, it is found that the ground on which cancellation of the sale-deed has been sought is that the sale-deed was got executed by coercion and by playing fraud on Deepchand, the recorded tenure-holder. There is no dispute with regards to the fact that Deepchand, on the date of execution of the sale-deed, was the recorded tenure-holder. The cancellation has been sought, primarily, on ground that there was no free consent of the vendor. Section 19 of the Indian Contract Act provides that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. Therefore, according to the plaint averments the sale deed in question would be voidable at the option of the plaintiffs. The effect of such a deed cannot be avoided unless it is cancelled by a decree. As the revenue Court has no power to pass a decree of cancellation of a document, the suit would lie before the Civil

12 2014 (6) ADJ 677

Court irrespective of the fact that name of the defendant-appellants have been entered in the revenue record consequent to the execution of the sale-deed.”

33. Therefore, the plaintiff-petitioner in the present case would be entitled to maintain a suit for cancellation of a sale deed, which suit, as held in Full Bench decision in the case of **Ram Padarath** would lie before a civil court. Though, in the suit in question, a declaration of voidance of the sale deed is sought, which would be seeking the legal status of the instrument. However, it being alleged to be a fraudulent document, the same is voidable, and in effect the suit is for cancellation of the instrument.

34. However, as mentioned above, the Act, 2008 came into on 2 October 2009 by means of a notification dated 11 November 2009. The Code, 2006, on the other hand, has received the assent of the President on 29 November 2013 and its commencement and applicability, as referred to in Sections 1 and 2, were made applicable with effect from 18 December 2015 and 11 February 2016 respectively. Therefore, the repugnancy, if any, in the Code, 2006 qua the Act, 2008 is rendered otiose in view of Article 254(2) of the Constitution (Ref: *G. Mohan Rao Vs. State of Tamil Nadu*¹³).

35. It is pertinent to mention here that even prior to the Act, 2008, the revenue courts have been dealing with matters at the grass-roots level in the rural areas and such courts are available even at the tehsil levels. Hence, suits for partition/division of holdings provided under Section 116 of the Code, 2006, declaratory suits by tenure-holder under Section 144/145 and grant of temporary injunction as provided in Section 146, and, other matters that are covered

13 (2022) 12 SCC 696

by the Code, 2006, would lie before the revenue courts constituted under the Code, 2006.

I am conscious of the fact that certain matters listed in Part I of the Second Schedule to the Act, 2008 may overlap the jurisdiction of revenue courts. For illustration, Sections 25 and 26 of the Code, 2006 may be seen which read as follows:-

“25. Rights of way and other easements.- In the event of any dispute arising as to the route by which a tenure holder or an agricultural labourer shall have access to his land or to the waste or pasture land of the village (other than by the public roads, paths or common land) or as to the source from or course by which he may avail himself of irrigational facilities, the Tahsildar may, after such local inquiry as may be considered necessary, decide the matter with reference to the prevailing custom and with due regard to the convenience of all the parties concerned. He may direct the removal of such obstacle and may, for that purpose, use or cause to be used such force as may be necessary and may recover the cost of such removal from the person concerned in the manner prescribed.

26. Removal of obstacle. - If the Tahsildar finds that any obstacle impedes the free use of a public road, path or common land of a village or obstructs the road or water course or source of water, he may direct the removal of such obstacle and may, for that purpose, use or cause to be used such force as may be necessary and may recover the cost of such removal from the person concerned in the manner prescribed.

(emphasis supplied)

35-A. As far as Section 23 of the Act, 2008 is concerned which provides for overriding effect of the Act in civil proceedings, it comes under Chapter V which provides for procedure in civil cases. A similar provision of overriding effect also exists in Section 18 of the Act, 2008 which comes under Chapter IV which provides for procedure in criminal cases. Each of these two provisions refer to the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, respectively. Therefore the usage of the phrase “or any other

law” appearing in Section 23 has to be read in reference to the context, which, in my opinion, would be relating to other procedures prescribed in other laws, and not with regard to provisions other than procedural laws in those laws. Accordingly, Section 23 would have no application on the aspect of jurisdiction.

36. It cannot be ruled out that jurisdictional issues may also crop up where an area is notified for consolidation of holdings under the U.P. Consolidation of Holdings Act, 1953. But that is a matter beyond the scope of the present adjudication and may require intervention by the Parliament and the State Legislature. The jurisdiction of the Gram Nyayalaya can always be amended.

37. Be that as it may, given the fact that it has been held that a civil court would have jurisdiction in the matter, the aspect that whether it is the civil court or the Gram Nyayalaya would have the jurisdiction in the present case, is now being considered.

38. Right to purchase of property, as correctly pointed out by the learned counsel for the petitioner, is referable to a right flowing out of an agreement to sell. Subject to the prescribed pecuniary jurisdiction, suits for specific performance of such instruments would be covered by the jurisdiction so conferred on the Gram Nyayalaya. A suit for cancellation of a sale-deed, on the other hand is not referable to a right to purchase of property, inasmuch as, in such a case, the plaintiff may or may not seek an ancillary relief of specific performance. It is accordingly held that the Gram Nyayalaya had no jurisdiction in respect of the suit in question.

39. It is important to mention here that an appeal against any judgment or order of the Gram Nyayalaya lies before the District Court subject to the pecuniary limits specified. As reflected in the aforementioned order dated 1.10.2022 passed by the Gram Nyayalaya, the valuation of the suit was made at Rs. 390/- which was affirmed to be correct by the court in its order dated 24.10.2019. Therefore, no appeal would lie against the aforesaid decree, which anyway has been held to be without jurisdiction.

40. The submission of the learned counsel for the petitioner to the effect that for purpose of ascertaining the nature of cases that would be covered by Part I of the Second Schedule of the Act, 2008, it is required to be seen whether the special procedure prescribed in the Act, 2008 would be appropriate for effective adjudication, or, whether the detailed procedure prescribed in the CPC would be appropriate, does not appear to be correct given the scheme and the objects of the Act, 2008. Presently, under the Rules of 2009, only those matters of valuation up to Rs.25,000/= can be entertained by the Gram Nyayalaya. Since maintainability of appeals before the District Court against the judgments and orders of the Gram Nyayalaya in civil cases has been restricted on the basis of valuation as provided under sub-section (2) of Section 34 of the Act, 2008, such restricted matters would, generally, deserve to be given a quietus. However, where there is a failure of justice, no one is precluded from availing judicial remedies as indicated in sub-section (6) of Section 34. With regard to matters whose valuation would entail maintainability of appeals on facts, the relevant provisions in CPC would come to the aid of such appellants as the procedure for appellate courts is not

prescribed in the Act, 2008. It is therefore, always open for the Parliament or the State Legislature, as the case may be, to amend the Second Schedule to the Act, 2008 to include such other nature of cases as they deem fit.

41. Under the facts and circumstances of the case, the impugned judgment and order dated 24.12.2021 passed by the Nyayadhikari, Gram Nyayalaya, Manikpur, District Chitrakoot, passed in New Original Suit No. 41 / 2020 (Smt. Siya Dulari v. Awadh Naresh) is set aside. The record of the suit with the Gram Nyayalaya is directed to be sent to the District Court within 15 days from today, if not already sent, for its adjudication afresh by the appropriate court.

42. This petition is, accordingly, **allowed**.

Order Date :- 11.3.2024

A.V. Singh/SK

(Jayant Banerji, J.)